

legislation should say. I chose in S. 1504 to incorporate the pleading standard set forth in Conley. A companion House bill introduced after S. 1504, H.R. 4115, took a somewhat different approach. Various commentators proposed yet other approaches.

After a hearing on the legislation before the Judiciary Committee, I consulted through my general counsel, Matthew L. Wiener, with leading academic proceduralists and several distinguished practicing lawyers with an eye toward offering a possible substitute amendment. The conclusion I soon drew was that Congress must indeed overrule *Twombly* and *Iqbal* but without (as the Court had done) prescribing a pleading standard outside the rulemaking process established by the Enabling Act. The best way to do so, I concluded, was simply to draft legislation requiring adherence to the Supreme Court's pre-*Twombly* decisions interpreting the applicable federal rules unless and until they are amended in accordance with the Enabling Act. The bill I have introduced today, the Notice Pleading Restoration Act of 2010, takes just that approach. I urge the next Congress to take up this bill when it convenes in January.

For their wise counsel in helping me work through the issues presented by the legislation, I would like to acknowledge and thank the following lawyers, most of them professors of civil procedure: Allen D. Black, a partner at Fine, Kaplan & Black, R.P.C.; John S. Beckerman, Professor of Law, Rutgers University School of Law-Camden; Stephen B. Burbank, the David Berger Professor for the Administration of Justice at the University of Pennsylvania Law School; Sean Carter, a shareholder of Cozen O'Connor; Jonathan W. Cuneo, a partner at Cuneo Gilbert & LaDuca LLP and a former counsel to the House Judiciary Committee; Michael C. Dorf, the Robert S. Stevens Professor of Law at Cornell University School of Law; William N. Eskridge, Jr., the John A. Garver Professor of Jurisprudence at Yale Law School; Suzette M. Malveaux, Associate Professor of Law, Columbus School of Law, Catholic University of America; Arthur R. Miller, University Professor at the New York University School of Law; John Payton, President and Director-Counsel, NAACP Legal Defense Fund; Alexander Reinert, an Associate Professor of Law at the Benjamin Cardozo School of Law; David L. Shapiro, the William Nelson Cromwell Professor of Law, Emeritus, at Harvard Law School; Stephen N. Subrin, Professor of Law, Northeastern University School of Law; and Tobias Barrington Wolff, a Professor of Law at the University of Pennsylvania Law School.

Professor Burbank deserves special acknowledgment for first suggesting and explaining the general approach underlying my bill during his testimony before the Senate Judiciary Committee on December 2, 2009, and special thanks for lending my staff so

much of his valuable time during the last year-and-a-half. I commend his unimpeachable testimony to my colleagues and their staffs.

Not all of these lawyers, I must emphasize in closing, endorse my legislation, and none of them of course is responsible for its particulars. Most of them submitted prepared statements for the record of the December 2 hearing, and their individual views can be found there.

## SUBMITTED RESOLUTIONS

### SENATE RESOLUTION 705—PROVIDING FOR A TECHNICAL CORRECTION TO S. RES. 700

Mr. SCHUMER (for himself and Mr. BENNETT) submitted the following resolution; which was considered and agreed to:

S. RES. 705

*Resolved,*

#### SECTION 1. TECHNICAL CORRECTION.

Senate Resolution 700, 111th Congress, agreed to December 10, 2010, is amended in section 3(b)—

- (1) by striking paragraph (1); and
- (2) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

### SENATE RESOLUTION 706—EXTENDING THE AUTHORITY FOR THE SENATE NATIONAL SECURITY WORKING GROUP

Mr. REID (for himself, Mr. MCCONNELL, Mr. KERRY, and Mr. KYL) submitted the following resolution; which was considered and agreed to:

S. RES. 706

*Resolved,* That Senate Resolution 105 of the One Hundred First Congress, 1st session (agreed to on April 13, 1989), as amended by Senate Resolution 149 of the One Hundred Third Congress, 1st session (agreed to on October 5, 1993), as further amended by Senate Resolution 75 of the One Hundred Sixth Congress, 1st session (agreed to on March 25, 1999), as further amended by Senate Resolution 383 of the One Hundred Sixth Congress, 2d session (agreed to on October 27, 2000), as further amended by Senate Resolution 355 of the One Hundred Seventh Congress, 2d session (agreed to on November 13, 2002), as further amended by Senate Resolution 480 of the One Hundred Eighth Congress, 2d session (agreed to November 20, 2004), as further amended by Senate Resolution 625 of the One Hundred Ninth Congress, 2d Session (agreed to on December 6, 2006), and as further amended by Senate Resolution 715 of the One Hundred Tenth Congress, 2d session (agreed to November 20, 2008), is further amended in section 4 by striking "2010" and inserting "2012".

### SENATE RESOLUTION 707—HONORING LULA DAVIS

Mr. REID submitted the following resolution; which was considered and agreed to:

S. RES. 707

Whereas Lula Davis, the Secretary for the Majority, will be retiring at the end of the

111th Congress, after a long and distinguished career;

Whereas Lula Davis was first elected as Assistant Democratic Secretary in 1997, and she was the first woman ever to hold that position;

Whereas Lula Davis was elected to be the Secretary for the Majority at the beginning of the 111th Congress, the first African American to serve in this position, and during the 111th Congress she has expertly tackled one of the toughest jobs in politics;

Whereas throughout her time in the Senate, Lula Davis has played a major role in managing the debate and passage of many significant pieces of legislation;

Whereas many legislative accomplishments over the years would not have happened without the leadership of Lula Davis;

Whereas Lula Davis lived in rural Louisiana, and worked as a teacher and guidance counselor;

Whereas Lula Davis remains committed to children in our community, founding and continuing to run a nonprofit mentoring and charitable organization called "Leadership Cares," which provides holiday meals to more than 650 families annually;

Whereas Lula Davis has encouraged many of her fellow Senate staff to volunteer alongside her family and friends to make a difference for those in need;

Whereas Lula Davis started her Senate career as a legislative aide to her home-state Senator, Russell Long, and went on to serve in almost every position on the floor staff, including office assistant, floor assistant, chief floor assistant, Assistant Secretary, and Secretary;

Whereas Lula Davis is a master of the complex formal and informal rules under which the Senate operates;

Whereas Lula Davis has consistently provided thoughtful and reliable advice to both Democratic and Republican leadership and all members of the Senate;

Whereas Lula Davis is loyal to the Senate and to Senators, and respects the traditions that make this body great;

Whereas the Senate has tremendous respect for Lula Davis and her hard work, and deeply appreciates her enormous contributions to the Senate and to the United States: Now, therefore, be it

*Resolved,* That the Senate expresses its deepest thanks to Lula Davis for her many years of outstanding service to the United States Senate and to the United States of America.

## AMENDMENTS SUBMITTED AND PROPOSED

SA 4921. Mr. LEVIN (for himself and Mr. MCCAIN) proposed an amendment to the bill H.R. 6523, to authorize appropriations for fiscal year 2011 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

SA 4922. Mr. KIRK submitted an amendment intended to be proposed to amendment SA 4904 proposed by Mr. CORKER to Treaty Doc. 111-5, Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms, signed in Prague on April 8, 2010, with Protocol.

SA 4923. Mr. REID (for Mrs. GILLIBRAND (for herself and Mr. SCHUMER)) proposed an amendment to the bill H.R. 847, to amend the Public Health Service Act to extend and improve protections and services to individuals directly impacted by the terrorist attack in